

Attorney Docket No.: J3747(C)
Serial No.: 10/592,921
Filed: September 14, 2006
Confirmation No.: 6265

REMARKS

Initially, it is noted that rejections previously of record have been withdrawn in view of applicants' amendments. However, claims have been rejected over newly cited references as discussed below.

At page 3 of the Office Action, the Examiner has rejected claims as allegedly unpatentable over U.S. Publication No. 2002/0136771 to Parr et al. ("Parr") in view of U.S. Publication No. 2003/0186834 to Pereira et al. ("Pereira") as evidenced by Kids Health reference from "Skin, Hair and Nails", 2011 ("Kids Health"). The Examiner states the Parr discloses compositions comprising about 0.1-10% of at least one cationic surfactant which cationic surfactant may be cetrimonium chloride (component (a)), hydroxyethyl cetylmonium chloride (component (c)) and mixtures thereof. The Examiner further states that, although Parr do not disclose di (C₂₀-C₂₄) imidazoline quaternary surfactant (component (b)), Pereira does teach such quats. The Examiner argues it would have been *prima facie* obvious to incorporate the dialkyl imidazoline quats of Pereira into compositions of Parr comprising cationic surfactants because Parr is said to teach that polyquats may be included as cationic surfactants. This rejection is respectfully traversed for reasons set forth below.

The Examiner's primary reasoning, as noted, is that it would have been obvious to one of ordinary skill in the art to select specific dialkyl imidazoline quat surfactants disclosed in Pereira and place them in skin-care, skin-treatment compositions (see ¶0021, line 5) of Parr. Thus, the Examiner argues, not only would it be obvious to

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combine the references generally (e.g., one of ordinary skill in the art would be motivated to substitute ingredients of Parr in such skin-care, skin-treatment products), but that such substitution, if made, would involve specific selection of the imidazoline quat in ranges we use (0.1-1.0%) with specific selection from Parr of compositions having both components (a) and (c) of our invention (it is noted that there is no example in Parr of a composition comprising use of two cationic surfactants).

For reasons discussed below, we believe no person of ordinary skill would have used components of Pereira in Parr (i.e., although both are compositions for topical application, they seek to address completely different goals relating to, on the one hand, conditioning of hair and, on the other hand, treatment of skin for anti-wrinkling benefit, preventing skin damage from oxidation and/or alleviate sunburn). Further, in the unlikely event the references were combined, there would be no impetus to select specific systems claimed in the subject invention.

More specifically, The Parr reference is directed to compositions that include ascorbic acid (Vitamin C) as active ingredient (see ¶0002). As indicated, Vitamin C is known to have at least three major biological functions with regard to skin (¶0003). Clearly, all benefits associated with stable deposition of ascorbic acid are benefits relative to improvements to the skin (e.g., stimulation of collagen deposition; anti-oxidant to protect skin from UV exposure). In this regard, no person of ordinary skill in the art of providing improved conditioning to hair would have the least interest or be directed or stimulated to determine how ascorbic acid might be better incorporated in a composition. It would not matter to such person because, even if they could more stably incorporate ascorbic acid, this would lead only to benefits in skin care, not to

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benefits in hair conditioning. Thus, a reference which broadly discloses that one or a mixture of surfactants (which in fact does not even specify that two must be used, as required by our invention, let alone specifying which two these might be) would be largely irrelevant to the person of ordinary skill and in the hair conditioning art.

While it may be true that compositions applied to skin may be applied to hair in a broad, general sense, this does not mean that the person of ordinary skill in the art would look at or scrutinize all references related to skin. In this case, as noted, the reference is related to compositions for stably incorporating ingredients which are beneficial only to the skin. If a person of ordinary skill in the art even viewed such reference, they would quickly see it related to stable incorporation of ascorbic acid and quickly move on to something different.

Moreover, in the unlikely event that such person of ordinary skill in the art would choose such reference as a primary reference, the question is then why, among thousands and thousands of references related to skin or hair compositions (personal care compositions), in the absence of hindsight, they would choose to focus on Pereira. There is no indication that, for example, use of imidazoline quats of Pereira would enhance stability of ascorbic acid if used in compositions of Parr. As discussed above, the person of ordinary skill would be concerned with hair styling in any event, so he/she would certainly have no reason whatsoever to consider adding such quat to compositions of Parr for what we later discovered had benefited hair styling effect. It is of course a fundamental premise of obviousness that one cannot use the application on file as a basis for suggestion or motivation. Absent knowledge of such hair styling

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benefit, however, there is simply no reason or motivation whatsoever for taking the imidazative of quats of Pereira and adding to Parr.

Even further, (even forgetting that the person of ordinary skill would have no reason to review a reference relating to stabilization of ascorbic acid, and that there is no reason to select Pereira from thousands upon thousands of references), in the most unlikely event that one of ordinary skill were to choose Pereira, they still would not have necessarily stumbled upon the specific composition of our invention. More specifically, even were the references combined, there is no direction, by example, that there must be a ternary system comprising imidazoline quat and two other cationic surfactants. The reference states only that mixtures may be used. However, none of the examples appear to have more than one cationic surfactant. There is certainly no teaching or suggestion that, if one selected two cationic surfactants and further added an imidazoline quat, there would be a benefit of any kind, be alone improved hair conditioning. Further, there is certainly no direction to select the two specific cationic surfactants (combined again with imidazoline quat) of our invention to achieve the result.

In short, contrary to the Examiner's broad statement that it would be *prima facie* to combine Parr and Pereira, essentially because they both disclose "personal care products" (page 4 of the Office Action), there are simply too many steps between such combinations to have been obvious to the person of ordinary skill. Such combination would require:

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- 1) combining references related to completely different problems (stabilization of ascorbic acid to improve skin benefits versus enhanced hair condition);
- 2) selecting Pereira, with no obvious reason to do so from thousands and thousands of references related to "personal products";
- 3) selecting a ternary system even though there is no example of use of more than ever one cationic surfactant with ascorbic acid (i.e., there are not even two because the imidazole quat is certainly not exemplified); and
- 4) if selecting two cationic surfactants from Parr, selecting the specific ones of our composition.

Such a series of assumptions is simply unrealistic to imagine and simply does not meet the test of *prima facie* obviousness.

With regard to the rejection of claim 8 at page 6 of the Office Action, it is believed that this rejection also fails as the fundamental combination of Parr and Pereira is in error, for reasons noted. Addition of Frantz et al. reference does nothing to remedy this fundamental deficiency.

In view of the discussion above, it is respectfully requested that the rejection of all claims be withdrawn and that claims, as currently pending, be allowed.

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If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,

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